

Fiscal Estimate - 2009 Session

☒ Original
 ☐ Updated
 ☐ Corrected
 ☐ Supplemental

LRB Number 09-2550/1	Introduction Number AB-0503
Description Exposure to a minor and providing a penalty	
Fiscal Effect State: <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate <div style="margin-left: 20px;"> <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations </div> </div> <div style="width: 33%;"> <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues </div> <div style="width: 33%;"> <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <div style="margin-left: 20px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> <input type="checkbox"/> Decrease Costs </div> </div> Local: <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate <div style="margin-left: 20px;"> <div style="display: flex; justify-content: space-between;"> <div> 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> <div> 3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> </div> </div> </div> <div style="width: 33%;"> 5. Types of Local Government Units Affected <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> Towns <input type="checkbox"/> Counties <input type="checkbox"/> School Districts </div> <div style="width: 33%;"> <input type="checkbox"/> Village <input type="checkbox"/> Others <input type="checkbox"/> WTCS Districts </div> <div style="width: 33%;"> <input type="checkbox"/> Cities </div> </div> </div> </div>	
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Agency/Prepared By DA/ Phil Werner (608) 267-2700	Authorized Signature Phil Werner (608) 267-2700
Date 10/19/2009	

Fiscal Estimate Narratives

DA 10/19/2009

LRB Number	09-2550/1	Introduction Number	AB-0503	Estimate Type	Original
Description Exposure to a minor and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

Should this bill be enacted, it would change the classification of the crime from misdemeanor to felony if the person is at least 17 years old when the violation occurs. Some prosecutors believe this would require additional time (e.g. - more court appearances, more attorney preparation time, etc.) to prosecute these crimes. Due to a lack of data, however, it is difficult to quantify the additional time required; therefore, it is difficult to estimate what the fiscal impact would be on DA offices.

Long-Range Fiscal Implications

Because this bill would change the classification of the crime from misdemeanor to felony if the person is at least 17 year old when the violation occurs, some prosecutors believe it will require more time to prosecute these crimes. Consequently, there would be a long-term fiscal impact, but without specific data it is difficult to quantify this.

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LRB Number 09-2550/1	Introduction Number AB-0503
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Agency/Prepared By DOC/ Sue Loniello (608) 240-5524	Authorized Signature Robert Margolies (608) 240-5056
Date 10/22/2009	

Fiscal Estimate Narratives
DOC 10/22/2009

LRB Number	09-2550/1	Introduction Number	AB-0503	Estimate Type	Original
Description Exposure to a minor and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

This bill changes the penalty from a Class A misdemeanor (maximum of nine months in a county jail) to a Class I Felony (maximum 1.5 years confinement and 2 years extended supervision) when a person, who is age 17 or over, exposes his or her genitals or pubic area or causes a child to expose his or her genitals or pubic area for the purpose of sexual gratification or arousal.

The Department of Corrections is unable to estimate the number of offenders who may be subject to the criminal penalty provisions of this bill. If offenders who were previously sentenced to a county jail are now sentenced to prison, DOC would see increase costs. The FY09 annual cost for an inmate in a DOC institution is approximately \$31,800. However, when there is excess capacity in DOC facilities, the incremental costs (i.e. food, health care and clothing) of housing a small number of inmates is approximately \$4,900, based on FY09 costs. When there is no excess capacity in DOC facilities, as is currently the case, the Department uses contract beds at rate of \$18,800 annually per person. The annual cost for community supervision is \$2,600.

County jails would see a decrease in jail costs if offenders are sentenced to a state prison rather than a county jail.

Long-Range Fiscal Implications

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Agency/Prepared By DOJ/ Mark Rinehart (608) 264-9463	Authorized Signature Mark Rinehart (608) 264-9463	Date 11/4/2009

Fiscal Estimate Narratives

DOJ 11/4/2009

LRB Number	09-2550/1	Introduction Number	AB-0503	Estimate Type	Original
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Assumptions Used in Arriving at Fiscal Estimate

Under s. 948.10 (1) whoever, for purposes of sexual arousal or sexual gratification, causes a child to expose genitals or pubic area or exposes genitals or pubic area to a child is guilty of a Class A misdemeanor. Under 2009 Assembly Bill 503, an adult who, for purposes of sexual arousal or sexual gratification, causes a child to expose genitals or pubic area or exposes genitals or pubic area to a child is guilty a Class I felony. In addition, under 2009 Assembly Bill 503 a child who, for purposes of sexual arousal or sexual gratification, causes another child to expose genitals or pubic area or exposes genitals or pubic area to another child is still guilty of a Class A misdemeanor, but is required to provide a biological specimen to the state crime lab for DNA analysis.

While most felony prosecutions are handled by district attorneys, assistant attorneys general in the Department of Justice's Criminal Litigation Unit on occasion act as special prosecutors throughout Wisconsin at the request of district attorneys. In addition, the Department of Justice's Criminal Appeals Unit represents the State of Wisconsin in defending felony convictions when those convictions are challenged in state or federal court. Under Wisconsin law, this unit is charged with preparing briefs and presenting arguments in front of any state appellate or federal court hearing a challenge to a felony conviction.

Since AB 503 will increase the types of activities that can be prosecuted as a felony, it is possible that the enactment of the bill could result in an increased caseload for the department's Criminal Litigation and Criminal Appeals units. The department anticipates that any increase in caseload would be relatively small. However, if the increase in the number of cases is larger than anticipated, the department will need additional resources.

Long-Range Fiscal Implications

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Affected Ch. 20 Appropriations		
Agency/Prepared By SPD/ Mike Tobin (608) 266-8259	Authorized Signature Krista Ginger (608) 264-8572	Date 10/21/2009

Fiscal Estimate Narratives

SPD 10/21/2009

LRB Number	09-2550/1	Introduction Number	AB-0503	Estimate Type	Original
Description					
Exposure to a minor and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

The State Public Defender (SPD) is statutorily authorized and required to appoint attorneys to represent indigent defendants in criminal proceedings. The SPD plays a major role in ensuring that the Wisconsin justice system complies with the right to counsel provided by both the state and federal constitutions. Any legislation has the potential to increase SPD costs if it creates a new criminal offense, expands the definition of an existing criminal offense, or increases the penalties for an existing offense.

This bill increases the penalties for the criminal offense of exposing genitals or pubic area to a child, if the defendant has attained age 17. This offense is presently classified as a misdemeanor, regardless of the defendant's age. The SPD's average cost to provide representation with a private bar attorney in a misdemeanor case is \$214.11, calculated on the basis of the SPD's average cost per case in fiscal year 2009. The SPD's average cost per felony appointed to private bar attorneys was \$584.62 for the same fiscal year.

Because probation or prison could be ordered upon conviction for the proposed felony crime, this change would indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation or extended supervision. Probation is an also option for misdemeanor cases; however, a felony case may result in a longer term of probation. The SPD provides representation in proceedings commenced by the Department of Corrections (DOC) to revoke supervision. Thus, the bill would indirectly increase the number of cases in which the SPD appoints attorneys in revocation proceedings. The average cost during fiscal year 2009 for SPD representation by a private bar attorney in a revocation proceeding was \$382.18.

Therefore, the SPD would incur additional costs in cases that would be reclassified as felonies under this bill. Because of the annual caseloads for staff attorney positions specified for budgeting purposes under § 977.08(5), Stats., it would be more cost effective to add staff attorney positions if a significant number of SPD cases resulted from this provision of the bill.

For the last two fiscal years, the SPD has averaged 9 misdemeanor appointments per year for charges of exposing genitals or pubic area to a child. In addition, the SPD has averaged 96 appointments per year for the misdemeanor offense of sexual intercourse with a child between the ages of 16 and 18. These cases would also likely meet the criteria for the proposed felony offense; therefore, the prosecutor might choose to charge the new felony offense in addition to (or instead of) the misdemeanor intercourse charge. Thus, the SPD could incur 105 additional felony appointments annually, with a cost of \$38,903.55. The SPD does not have data to estimate the additional revocation hearings that could occur as a result of the 105 additional felony cases.

Counties are also subject to increased costs when a new crime is created. There are some defendants who, despite exceeding the SPD's statutory financial guidelines, are constitutionally eligible for appointment of counsel because it would be a substantial hardship for them to retain an attorney. The court is required to appoint counsel at county expense for these defendants. Thus, the counties would experience increased costs attributable to the higher classification of criminal charges resulting from this bill. The counties could also incur additional costs associated with incarceration of defendants, both pending trial and after sentencing.

Long-Range Fiscal Implications